

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
STANDARD PETROLEUM CORP.	:	DETERMINATION
D/B/A A.J.S. STANDARD	:	DTA NO. 815413
for Review of a Denial, Suspension, Cancellation or	:	
Revocation of a License, Permit or Registration under	:	
Articles 12-A and 13-A of the Tax Law.	:	

Petitioner, Standard Petroleum Corp. d/b/a A.J.S.Standard, 128-07 18th Avenue, College Point, New York 11356, filed a petition for review of a denial, suspension, cancellation or revocation of a license, permit or registration under Articles 12-A and 13-A of the Tax Law.

A hearing was held before Frank W. Barrie, Administrative Law Judge, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on July 24, 1997 at 10:30 A.M., with all briefs to be submitted by November 21, 1997, which date began the six-month period for the issuance of this determination. Petitioner appeared by Seiff & Kretz, Esqs. (Charles D. Abercrombie, Esq., of counsel). The Division of Taxation ("Division") appeared by Steven U. Teitelbaum, Esq. (John E. Matthews , Esq., of counsel).

ISSUE

Whether sufficient grounds exist to support the proposed cancellation of petitioner's registration as a retailer of heating oil only and as a residual petroleum products business.

FINDINGS OF FACT

1. Petitioner, Standard Petroleum Corp. d/b/a A.J.S. Standard (“Standard Petroleum”), is a retailer of heating oil based in the College Point section of the borough of Queens in New York City. Petitioner has approximately 15 employees, including truck drivers, burner service repair people and office workers. With annual heating oil sales of approximately \$3,000,000.00,¹ petitioner services customers in an unspecified area of Long Island. According to the testimony of Louis S. Capossela,² petitioner’s president and sole shareholder, 90% of its heating oil sales is residential and 10% commercial.

2. Louis S. Capossela purchased petitioner or petitioner’s assets ³ in 1980 from three individuals, Sidney Sklar, Frank Rizzo and Vincent Rizzo, who, according to the testimony of Mr. Capossela, operated a company that had absorbed other companies including one named Allen James Savon. Petitioner does business under the name of A.J.S. Standard whose initials represent an abbreviation of Allen James Savon.

3. The Division issued against petitioner a Notice of Proposed Cancellation of Your Registrations as a Retailer of Heating Oil Only and as a Residual Petroleum Products Business Under Articles 12-A and 13-A of the Tax Law dated January 5, 1996. The notice stated four grounds for canceling the registrations of Standard Petroleum Corp./A.J.S. All four grounds relate to failures to comply with the Tax Law by Shore Line Oil Co., Inc. and by Westchester

¹ Petitioner’s financial statements and accountant’s compilation report for the nine months ended March 31, 1997 and 1996 include statements of income and retained earnings which show oil sales for the nine months ended March 31, 1997 of \$2,811,015.00 and for 1996 of \$2,811,387.00. Petitioner’s application for registration as a retailer of heating oil only shows that for 1985, 1986, and 1987, petitioner “sold or used” the following number of gallons of diesel motor fuel including heating oil: 3,500,000, 3,500,000 and 4,100,000, respectively.

²Mr. Capossela’s surname has been spelled incorrectly in the transcript and in the Division’s documents as “Caposella”.

³ The record does not disclose the way in which Mr. Capossela’s purchase of petitioner was structured.

Hudson Petroleum Corp., two companies also owned by Louis S. Capossela, as follows:

1. Louis Caposella [sic] is the President and 100% owner of the stock of Shore Line Oil Co., Inc., a corporation which has failed to comply with Articles 12-A, 13-A and/or 28 of the Tax Law as follows (Tax Law Sec. 283.4):

- a. Shore Line Oil Co., Inc. has finally determined liabilities which have not been paid in full.

- b. Shore Line Oil Co., Inc. has continued to operate as a Diesel Motor Fuel Distributor after the cancellation of its registration.

- c. Shore Line Oil Co., Inc. has continued to operate as a Residual Petroleum Product Business after the cancellation of its registration.

2. Louis Caposella [sic] was President and 100% owner of the stock of Westchester Hudson Petroleum Corp. at the time that Westchester Hudson Petroleum Corp. incurred liabilities for taxes under Articles 12-A, 13-A and/or 28 of the Tax Law which have been finally determined and remain unpaid (Tax Law Sec. 283.4).

4. Shore Line Oil Co., Inc. ("Shore Line") was formed in 1948 by Louis S. Capossela's father, Louis Capossela, Sr. Upon his father's death in 1969, Mr. Capossela, who had worked for Shore Line since he was a teenager, took over Shore Line and has "been running it almost thirty years now" (tr., p. 95). Mr. Capossela is Shore Line's president and sole shareholder.

5. Until the 1980s, Shore Line primarily sold diesel fuel as heating oil for residences and commercial establishments. Sometime in the 1980s, it entered the gasoline sales business as well. It also began to sell diesel fuel as diesel motor fuel not just as heating oil. For an approximately four-year period, running from 1989 to July 1993, Shore Line fell behind in its payment of taxes under Articles 12-A, 13-A and 28 of the Tax Law. It entered into a deferred payment agreement with the Division in order to pay its overdue taxes. Shore Line paid on this agreement until early 1997, about a year after the Division's issuance of the notice of proposed cancellation described in Finding of Fact "3", when it paid off in full the taxes remaining due. In order to satisfy its overdue taxes, Shore Line sold off some of its assets to its competitors in 1992 and 1993, namely two business routes, i.e., a list of its heating oil customers in the Bronx, to

Atlas Fuel and a list of its heating oil customers in upper Westchester, north of interstate 287, to Lewis Fuel. Then in 1997, Shore Line sold⁴ its office and garage in New Rochelle (Westchester County) and paid in full taxes owed to New York State. Consequently, as of the date of the hearing in this matter, Shore Line no longer, in the words of the notice of proposed cancellation described in Finding of Fact “3”, “has finally determined liabilities which have not been paid in full.” Therefore, only three of the four grounds for canceling petitioner’s registrations remain at issue. The Division has not asserted Shore Line’s failure to *timely* pay its taxes as a basis for canceling the registrations.

6. The Division has also issued approximately 25 notices of deficiency and determination over the past nine years against petitioner, but it has not asserted petitioner’s failure to timely pay its taxes as a basis for canceling petitioner’s registrations. None of those approximately 25 assessments are currently open, and Mr. Capossela, to the contrary, testified that petitioner, in contrast to Shore Line, always paid its taxes on time. The record does not show the basis for the Division’s issuance of the 25 statutory notices against petitioner.

7. Petitioner does not deny that Shore Line continued to operate as a diesel motor fuel distributor after the cancellation of its registration pursuant to a notice of cancellation dated July 29, 1993, which Shore Line did not protest. Rather, Shore Line surrendered its registration to the Division on or about July 29, 1993. Consequently, Shore Line was not authorized after July 29, 1993 to sell heating oil or diesel motor fuel in New York State since its registration as a distributor of diesel motor fuel had been canceled. Nonetheless, Shore Line continued to make diesel motor fuel sales until January 1995 and continued to make heating oil sales to date.

⁴Shore Line now rents space from an unrelated landlord at \$5,500.00 per month.

8. Heating oil and diesel motor fuel are the same product. Mr. Capossela noted in his testimony:

What they have done now is they have dyed home heating fuel red and left diesel fuel white. If an inspector, auditor, took a sample from somebody's vehicle, and it was red, that means someone is fooling around putting heating oil into diesel tanks (tr. p. 145).

In short, heating oil and diesel motor fuel are distinguished by their use and tax status more than by their physical properties.

9. On or about September 13, 1994, more than a year after its registration as a distributor of diesel motor fuel had been canceled, Shore Line applied for a registration as a retailer of heating oil only. In response, the Division issued a letter dated September 21, 1994 acknowledging receipt of Shore Line's application and also notifying Shore Line that it was not allowed to conduct any unauthorized business before its application was approved. By a letter dated January 9, 1995, Mr. Capossela was again notified by the Division that Shore Line was not allowed to sell diesel motor fuel including heating oil within New York State without a registration after the Division became aware that it was making such sales. On May 22, 1995, the Division's Tax Enforcement Unit stopped a Shore Line truck and issued an appearance ticket to the driver, Louis S. Capossela, III. The younger Capossela was charged with two offenses: (1) failure to produce a uniform manifest contrary to Tax Law § 1812(e) and (2) the retail sale of home heating oil without being registered contrary to Tax Law § 1812-1(b).

10. Shore Line contends that by approving a deferred payment agreement dated January 23, 1995, the Division acquiesced in Shore Line's continued operation and reaped benefits from such continued operation by receiving payment of overdue taxes. Further, Shore Line operated its heating oil business openly and many individuals in the Division were aware of its continued

operation even after the denial of its application for registration as a retailer of heating oil only.⁵

11. Louis S. Capossela was also the president and sole shareholder of Westchester Hudson Petroleum Corporation (“Westchester Hudson”), now a defunct business. In the 1980s, Westchester Hudson, as operated by Mr. Capossela, was a wholesaler of heating oil and gasoline, with annual sales of approximately \$20 million. Westchester Hudson, which operated two fuel terminals, had only four employees. Mr. Capossela described its operation as follows:

“We would receive the product by boat. The boat would pump it into our tanks, and then our men in the terminal would help disperse it into trucks that came in to load” (tr., p. 139).

Westchester Hudson ceased gasoline sales in December 1986 and all operations in June 1989. However, according to the records of assessments maintained by the Division on a computer system called the Case and Resource Tracking System (“CARTS”), an amount in excess of \$500,000.00⁶ in tax, interest and penalty remains due from Westchester Hudson. At the hearing in this matter, Peter Spitzer, the head of the Division’s registration and bond unit, reviewed a summary of case activities with reference to Westchester Hudson from the CARTS system, consisting of 4 pages, as well as details concerning such summary, consisting of 63 pages. The 4 summary pages list 32 specific contact dates, and the details concerning such contact dates are included on the 63 back-up pages. According to Mr. Spitzer, most of the contacts were done by a compliance agent in the conduct of duties to collect on outstanding liabilities of Westchester Hudson. For example, the first and last dates shown on the summary

⁵ By its decision in *Matter of Shore Line Oil Company, Inc.* (February 15, 1996), the Tax Appeals Tribunal sustained the Division’s notice of proposed refusal to register Shore Line as a retailer of heating oil only dated January 20, 1995.

⁶ A case contact dated December 22, 1995 shows a warrant docketed by the Division against Westchester Hudson in the amount of \$448,561.30.

pages are November 15, 1990 and April 22, 1997, respectively. There are two pages showing details concerning the first contact date of November 15, 1990, and two pages showing details concerning the last contact date of April 22, 1997. The two pages showing details concerning November 15, 1990 indicate “a regular collection letter mailed” and a “balance due” of \$32,806.13. The two pages showing details concerning April 22, 1997 indicate in the space for “contact descrip” that “bankruptcy/special procedures unit-see comments.” The “comments” note “rec’d ck for \$921.00, applied to asmts L004693223 (\$.88) and L004693227 (\$920.12), tax only.”

12. A contact dated May 27, 1992 shows that a Division employee spoke with Mr. Capossela who advised that Westchester Hudson had been dormant since 1988 or 1989 and that Westchester Hudson had no assets to apply to outstanding liabilities. There do not appear to be any other contacts that note a specific communication with Mr. Capossela. Other contacts of special note include the following:

Date	Contact
May 27, 1992	District office manager recommends closing case because corporation has no assets.
August 27, 1992	Supervisor comments that a form was prepared in order to transfer the case to a status of uncollectable because of no assets.
April 19, 1993	Tax enforcement received payment for restitution in the amount of \$1,074.50.
July 8, 1993	Documents sent to Law Bureau with regard to a conciliation and mediation services conference.
July 11, 1995	Bankruptcy-special procedure unit received payment in the amount of \$2,149.00 and applied to a particular assessment.
January 24, 1996	Close case, no responsible person assessment because too old.
January 30, 1996	Supervisor recommends reclose case because “corp killed” and “nothing has changed”.

February 13, 1996	Received check for \$1,074.50 and applied to the collection case.
June 4, 1996	Received check for \$2,149.00 and applied to a tax only assessment.

13. By two notices of withdrawal of petition and discontinuance of proceeding, each dated February 3, 1995, Westchester Hudson Petroleum Corp. withdrew its petitions filed with the Division of Tax Appeals, with prejudice, that had contested statutory notices issued by the Division under Article 12-A and Article 13-A, respectively.

14. Louis S. Capossela asserts that petitioner has been operated independently of his other entities. However, petitioner's business is the same type of retail heating oil business as Shore Line's, although Shore Line's operation, with 25 employees as compared to petitioner's 15 employees, is somewhat larger. Further, Mr. Capossela noted that the only difference between the operations is one of geography, and even so, he noted:

We are only fifteen minutes apart, so I spend half days here and there, back and forth. I'm always available by telephone for decisions to be made right away.

Administrative Law Judge- It's a flexible arrangement, though, you take a phone call on Shore Line's business, and the next phone call could be on Standard's business?

Mr. Capossela- That is correct. Wearing two hats at once. (Transcript, pp. 132-133.)

SUMMARY OF THE PARTIES' POSITIONS

15. Petitioner maintains that it and its principal, Louis S. Capossela, are responsible and reliable so as to be qualified to maintain registrations as a retailer of heating oil only and as a residual petroleum products business. Further, Standard Petroleum, which is a profitable company, "operates independently of any other entity with which Mr. Capossela has been or is involved" (Petitioner's brief, p. 7). According to petitioner, Mr. Capossela's failures "have been unfairly scrutinized to the exclusion of the positive traits that make him a responsible distributor"

(Petitioner's brief, p. 8). He worked diligently to pay off tax liabilities accrued by Shore Line and has offered to pay taxes due from Westchester Hudson.

Petitioner contends that the Division should be estopped from using Shore Line's continued operation as a basis for canceling its registrations because "the Department, by its actions, in fact sent a message to Shore Line, namely that it may continue to operate, and pay its current taxes and deferred payment agreements" (Petitioner's brief, p. 11). Petitioner maintains that it would be a manifest injustice to permit the Division to revoke its registrations "having accepted Shore Line's operation and its tax revenue" (Petitioner's brief, p. 12).

In addition, petitioner argues that the doctrine of laches should be applied to bar the Division from using Westchester Hudson's tax liability as a basis for canceling its registrations. According to petitioner, the Division delayed from May 27, 1990 to January 5, 1996 before raising the issue of Westchester Hudson's tax liability against it. This delay harmed petitioner because "of the continuing investment in and labor expended on behalf of Standard, during the period of May 1990 to January 1996, all of which will be lost if the company is put out of business" (Petitioner's brief, p. 16). Further, "Mr. Capossela and Standard were deprived of the opportunity to vigorously contest the liability [of Westchester Hudson]" because Westchester Hudson withdrew its petitions with prejudice before the notice of cancellation of registrations was issued to petitioner (Petitioner's brief, p. 16).

16. The Division counters that Westchester Hudson's outstanding tax liability of more than \$500,000.00 is a sufficient basis for the proposed cancellation of petitioner's registrations. The court in *Shaw v. Tax Appeals Tribunal* (203 AD2d 720, 610 NYS2d 971) held that an open tax liability was alone a sufficient basis for cancellation of a license. The Division argues that it is not guilty of laches in asserting Westchester Hudson's outstanding tax liability as a basis for

canceling petitioner's registrations because "[t]he Division could not assert those assessments until they had become fixed and final liabilities, which did not occur until February 3, 1995 [when the petitions of Westchester Hudson were withdrawn]" (Division's brief, p. 8). The Division points out that it asserted Westchester Hudson's "newly fixed and final liabilities as a basis for its refusal to register Shore Line in a related proceeding" on March 3, 1995 (Division's brief, p. 7). Further, the Division argues that Shore Line's unlicensed operation is a sufficient basis for the proposed cancellation of petitioner's registrations. The Division denies that it acquiesced in Shore Line's unlicensed operation. The fact that it refused to register Shore Line "is evidence that such unlicensed operation was not acceptable to the Division" (Division's brief, p. 9). The Division further notes that petitioner has not suffered any prejudice to support its estoppel argument. Rather, it benefitted by the Division's allowing it "to maintain its registration[s] and operate legally for more years than it was entitled" (Division's brief, p. 10).

17. Petitioner contends that "[b]ased upon the totality of circumstances, Standard and Mr. Capossela are worthy of collecting and paying taxes on behalf of and to the State of New York" (Petitioner's reply brief, p. 3). Petitioner emphasizes that Louis Capossela has never hidden behind corporate names, Shore Line and Westchester Hudson have operated openly and separately with no effort to conceal his involvement, Shore Line has paid off its deferred payment agreements, the outstanding liabilities of Westchester Hudson are the result of an accountant's error, discovered during an audit, which Mr. Capossela has offered to pay in substantial part, and petitioner "has always complied with the Tax Law" (Petitioner's reply brief, p. 3). Petitioner points out that Westchester Hudson's liability was not the result of any fraudulent and deceitful acts unlike the taxpayer in *Shaw v. Tax Appeals Tribunal (supra)*. Petitioner contends that the standards for denying a license application and revoking a

registration are not the same because petitioner “has a performance history that should be analyzed” (Petitioner’s reply brief, p.5). Further, petitioner argues that “the withdrawal of [Westchester Hudson’s petitions] must be viewed as a mere record keeping formality” (Petitioner’s reply brief, p.7). Petitioner maintains that the Westchester Hudson case had been dormant for many years. Therefore, laches should bar the Division from canceling Standard’s registrations based upon Westchester Hudson’s liability. Finally, based on the passage of time, it was reasonable for petitioner to conclude that its registrations would not be canceled as a result of Shore Line’s unlicensed operation.

CONCLUSIONS OF LAW

A. Pursuant to Tax Law § 282-a(3)(b), the excise tax on diesel motor fuel is not imposed on the sale of diesel motor fuel which is used exclusively for heating purposes. Nonetheless, a retailer of heating oil only must maintain a registration under Tax Law § 282-a(2), which authorizes the Division to issue a limited registration for retailers of heating oil only. Further, pursuant to Tax Law § 302, a retailer of heating oil must be registered as a residual petroleum product business, and, under Tax Law § 302(b), a residual petroleum product business is subject to the provisions of Tax Law § 283 relating to the registration of distributors.

B. Pursuant to Tax Law § 283(4), petitioner’s registration as a retailer of heating oil only and as a residual petroleum product business may be canceled or suspended by the Division for certain enumerated reasons involving any of the following individuals or entities: (1) the registrant, i.e., petitioner, (2) an officer, director, shareholder, employee or partner of petitioner under a duty to act for petitioner, or (3) a shareholder of petitioner directly or indirectly owning more than 10 percent of petitioner’s stock entitling such shareholder to voting rights in the corporation. As relevant to this matter, pursuant to Tax Law § 283(4) the circumstances which

may warrant the cancellation of a registration under Tax Law § 282-a(2) and § 302(b) include the following:

(1) the failure “to comply with any of the provisions of [article 12-A] or article twenty-eight of this chapter with respect to motor fuel or any rule or regulation adopted pursuant to this article or article twenty-eight of this chapter with respect to motor fuel by the department of taxation and finance or by the commissioner,” and

(2) where petitioner or an officer, partner or greater than 10 percent shareholder of petitioner

was an officer, director, shareholder, employee or partner of another person who as such officer, director, shareholder, employee or partner was under a duty to act for such other person or was a shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such other person (where such other person is a corporation) entitling the holder thereof to vote . . . at the time such other person committed any of the acts or omissions which are . . . specified in this subdivision within the preceding five years.

The Division clearly has the authority under this second provision to base the cancellation of petitioner’s registrations on the failures of Westchester Hudson and Shore Line to comply with the provisions of article 12-A since Mr. Capossela was petitioner’s president and 100 percent shareholder as well as the president and 100 percent shareholder of Westchester Hudson and Shore Line.

C. In *Matter of Diamond Terminal Corporation* (Tax Appeals Tribunal, September 22, 1988, *confirmed* 158 AD2d 38, 557 NYS2d 962, *lv denied* 76 NY2d 711, 563 NYS2d 767) the Tribunal noted that the revision of Article 12-A by the Laws of 1986 (ch 276) was the “culmination of legislative and executive efforts to combat massive evasion of the excise and sales taxes imposed on motor fuel by Articles 12-A and 28 and pursuant to the authority of Article 29 of the Tax Law” (*id.*). In *Matter of OK Petroleum* (Tax Appeals Tribunal, November

1, 1990), the Tribunal specifically discussed the registration provisions of Article 12-A.

[C]hanges to the registration provisions for distributors were enacted which allowed the Division of Taxation to refuse to register a distributor and to cancel or suspend a registration under certain conditions (Tax Law § 283[2] and [4]). The obvious intent of the change in the registration provisions was to provide the Commissioner with the opportunity to decide whether the distributors who would be receiving tax moneys and holding them in trust until paid over to the State could be relied upon to properly exercise their tax collection responsibilities (*see*, Memorandum of State Department of Taxation and Finance, McKinney's Session Laws, 1986, ch 276, at 2882). In 1988 similar legislative changes were made to address evasion and avoidance of the tax imposed on diesel motor fuel (L 1988, ch 261, §§ 67-105). (*Matter of OK Petroleum, supra.*)

D. The Division's position that Westchester Hudson's outstanding liability for unpaid taxes is a sufficient basis for the proposed cancellation of petitioner's registration because both Westchester Hudson and petitioner were owned and operated by Mr. Capossela is persuasive. The five-year statute of limitations does not apply to the failure to pay tax which is an act or omission which occurs each day that the tax remains unpaid (*see, Matter of Janus Petroleum, Inc.*, Tax Appeals Tribunal, April 24, 1997). Further, it is noted that the Tax Appeals Tribunal in *Matter of Shore Line Oil Company, Inc.* (February 15, 1996) rejected the laches argument raised by Shore Line which was similar to petitioner's laches argument in the matter at hand:

[W]e agree with the Administrative Law Judge that even if the laches defense was properly raised, petitioner has failed to show that it applies on these facts. The Administrative Law Judge held that petitioner had failed to prove 'that it would be manifestly unjust to allow the liabilities of Westchester Hudson to be considered in determining Shore Line's fitness to act as a Diesel motor fuel distributor'. . . .

The Division is correct that petitioner has not suffered any prejudice to support its laches argument. Rather, it benefitted by the Division's allowing it to maintain its registrations and operate for more years than it was entitled. The record, as noted in Finding of Fact "1" and footnote "1" does not disclose any substantial increase in petitioner's operation over the years. Nor did petitioner introduce any concrete evidence concerning any substantial investments in its

operation.

E. Furthermore, Shore Line's unlicensed operation provides another basis for the proposed cancellation of petitioner's registrations. The record does not support petitioner's argument that the Division acquiesced in Shore Line's unlicensed operation. The fact that it refused to register Shore Line and that such refusal was upheld by the Tax Appeals Tribunal in *Matter of Shore Line (supra)* shows that it did not approve of Shore Line's unlicensed operation. Further, the fact that it entered into a deferred payment agreement with Shore Line does not equate to acquiescence in the company's unlicensed operation but rather reflects a reasonable step to ensure payment of overdue taxes. Consequently, petitioner's equitable estoppel argument is rejected. The doctrine of estoppel does not apply to government acts unless exceptional facts require the application of the doctrine in order to avoid a manifest injustice (*Matter of Harry's Exxon Service Station*, Tax Appeals Tribunal, December 6, 1988). Neither such exceptional facts nor manifest injustice are present here (*see, Matter of Shore Line Oil Company, Inc., supra* [wherein the Tribunal also rejected Shore Line's similar estoppel argument]).

F. Although it is necessary to weigh certain mitigating factors against the justifications for canceling petitioner's registrations detailed above, petitioner has failed to sustain its burden of proving that the proposed cancellation was in error (*see, Matter of Janus Petroleum, Inc.*, Tax Appeals Tribunal, January 11, 1991, *annulled on other grounds* 180 AD2d 53, 583 NYS2d 983).

G. In particular, petitioner has emphasized that its operation is separate from Shore Line's and unrelated to the defunct operation of Westchester Hudson. However, as noted in Finding of Fact "14", the operation of Shore Line and petitioner are overseen by Mr. Capossela, who at one

moment is involved in petitioner's operation and the next in Shore Line's. Second, although petitioner's sales of heating oil for residential purposes are not subject to the imposition of diesel tax under Tax Law § 282-a(3)(b) and sales tax under Tax Law § 1105-A, if such heating oil was sold as diesel fuel, it would be subject to tax. Consequently, the Division has the right to ensure that a taxpayer involved in the sale of heating oil will comply scrupulously with the provisions of article 12-A especially given the history of tax evasion in the industry as noted in Conclusion of Law "C". Petitioner is correct that the taxpayer in *Shaw v. Tax Appeals Tribunal (supra)*, a case relied upon by the Division, committed fraudulent acts. In contrast, it has not been accused of fraud nor have Shore Line or Westchester Hudson been accused of fraudulent or deceptive acts. Nonetheless, the law does not require that registrations may be canceled only if fraudulent or deceptive acts have been committed by the registrant or related entities. In sum, the failures of Shore Line and Westchester Hudson as noted above are sufficient to justify the cancellation of petitioner's registrations even given certain mitigating factors.

H. The petition of Standard Petroleum Corp. d/b/a A.J.S. Standard is denied, and the Notice of Proposed Cancellation of Your Registrations as a Retailer of Heating Oil Only and as a Residual Petroleum Products Business dated January 5, 1996 is sustained.

DATED: Troy, New York
May 7, 1998

/s/ Frank W. Barrie
ADMINISTRATIVE LAW JUDGE